IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1541 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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UNION OF INDIA
Versus
NATWAARLAL N PARMAR

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Appearance :
MR SN SINHA for Petitioner.
MR RC PATHAK for Respondent.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 30/07/2007

ORAL JUDGMENT

The Railway administration/Union of India, being

aggrieved by the award dated 11.09.98 passed by the Industrial Tribunal, Ahmedabad in Reference ITC No. 64 of 1989 is before this Court.

The short facts necessary for disposal of the present writ application are that the respondent was working with the present petitioner as a Cleaner since 1982. For the period within 03.05.83 to 07.10.83, the respondent remained absent. Taking a serious note of the conduct, misconduct, exhibited by the Workman, a charge sheet was served upon him and after making an inquiry, he was terminated on 10.09.85. The departmental appeal also came to be dismissed on 29.11.85. The respondent thereafter came before the Central Industrial Tribunal with a submission that award of the punishment was shockingly disproportionate; he was not provided opportunity and no punishment could be awarded to him because he had sufficient reasons to remain absent. The present petitioner appeared before the Tribunal and submitted that the inquiry was conducted in accordance with law; opportunity was given; principles of natural justice were observed, and, as unauthorised absence was taken to be a serious misconduct, the order of termination could not be held to be illegal.

After recording the evidence and hearing the parties, learned Tribunal held that the punishment awarded to the workman was shockingly disproportionate. It accordingly interfered with the quantum of punishment awarded to the workman and directed that the workman be reinstated at his original place with 50% backwages from the date of termination.

The petitioner Union of India is now before this Court.

Shri S.N. Sinha, learned counsel for the petitioner submitted that if the absence was unauthorised and there were no good reasons to hold that the absence could be justified, the Industrial Tribunal could not interfere with the quantum of punishment. He also submitted that in case the Industrial Tribunal found that the punishment was shockingly disproportionate, then it could have set aside the punishment and remanded the matter back to the authorities for awarding the punishment, looking to the nature of the misconduct.

Shri Pathak, learned counsel for the respondent, on the other hand, bas opposed the writ application.

Section 11.A of the Industrial Disputes Act provides that in a given case, the Labour Court/Industrial Tribunal would be entitled to interfere with the quantum of punishment. True it is that the approach cannot be whimsical or to show benevolence at the cost of others, but it cannot be said that the Industrial Tribunal or Labour Court in a deserving case, would not be entitled to interfere with the quantum of punishment.

In the present matter, the respondent had come before the Court with a submission that he remained absent because of the death of his elder brother, and that thereafter he himself fell sick and thereafter his wife had fallen sick and thereafter his daughter had suffered Typhoid. According to him as there was nobody to look after the others, he could not join the duties.

True it is, the workman should have given an application for grant of leave, but if under compelling circumstances, as found by the Industrial Tribunal, he could not make an application, then too he would be entitled to satisfy the judicial conscious of the Industrial Tribunal by showing that there are sufficient reasons for remaining absent and that the punishment was shockingly disproportionate to the misconduct alleged against him.

In view of the findings recorded by the learned Industrial Tribunal, I am unable to hold that the Industrial Tribunal acted contrary to law or stepped outside its jurisdiction.

I find no reason to interfere. The petition deserves to be, and is accordingly, dismissed, with no costs.

[R.S.GARG, J.]

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